

Remarks

Thank you for your work in connection with this application. Following are Applicant's remarks responsive to the Office Action.

Amendments

The specification is amended as noted. Text deletions are indicated by strike out marks or double brackets and text additions are indicated by underlining.

The specification amendments improve clarity and correct typographical errors, paragraph breaks and misspellings. For example, the correction to the paragraph starting at page 8, line 19 merely adds an indentation at the start of the paragraph. As is apparent from the nature of the amendments, no new matter is added to the specification.

Claims 1-8 are canceled without prejudice or disclaimer. Claims 9-28 are new.

Response to Election/Restriction Requirement

Cancellation of claims 1-8 renders the restriction requirement moot. As directed, however, Applicant affirms the election of claims 1-5. Consistent with such election, new claims 9-28 are directed to materials and not to a process of making materials. Applicant reserves the right to file a divisional application.

Response to Rejections

Rejections under 35 U.S.C. § 112

Claims 1-5 were rejected under § 112. Cancellation of claims 1-5 renders the rejection moot. It is believed that new claims 9-28 are clear and avoid any issues under § 112.

Rejections under 35 U.S.C. § 102(b)

Claims 1-2 were rejected under 35 U.S.C. § 102(b) based on U.S. Patent No. 4,791,015 (Becker). Cancellation of claims 1-2 renders the rejection moot. New independent claims 9 and 25 are not anticipated by Becker because it is apparent that Becker does not include the

constituents recited in such claims.

Rejections under 35 U.S.C. § 103(a)

Claim 3 was rejected under 35 U.S.C. § 103(a) based on Becker, claim 4 was rejected under § 103(a) based on Becker and U.S. Patent No. 5,183,438 (Blom) and claim 5 was rejected based on Becker and U.S. Patent No. 3,928,706 (Gibbons). Cancellation of these claims renders the rejection moot.

New independent claims 9 and 25 are not obvious in view of these references. New claim 9 requires a first layer including silica sand and phenolic resin and having pores therein, a second layer overlying the first layer and which includes an aliphatic polymer and a resilient material and a third layer overlying the second layer and which includes an aliphatic polymer, silica sand and silica flour. New claim 25 requires a base layer including silica sand and phenolic resin and having interstitial spaces therein, a second layer bonded to the base layer and which includes an epoxy resin and elastomeric particles and a third layer overlying the second layer and which includes an epoxy resin, silica sand and silica flour.

As was correctly pointed out at pages 4 and 5 of the Office Action, Becker does not include silica sand in the base layer and does not include a layer comprising an aliphatic polymer with rubber particles or flexible additives. Becker does not include a third layer as claimed. As was also noted at page 5 of the Office Action, Becker does not have any colored quartz particles as is the case in claims 21, 22 and 27. Becker does not include any fourth layer as in claims 24 and 28. Becker is materially different from the materials as claimed and can no longer serve as a reference for any claim rejection under §103.

The secondary references of Blom (the sports floor product) and Gibbons (the decorative laminate) are wholly dissimilar from the subject matter of claims 9 and 25.

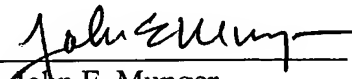
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Conclusion

Allowance of new claims 9-28 is earnestly requested. The Examiner is invited to call the undersigned if that would be of assistance in resolving any outstanding issue regarding this application. The Commissioner is authorized to debit deposit account 10-0270 to pay for any amounts due in connection with this paper. Kindly notify the undersigned in the event that the deposit account is debited or credited.

Respectfully submitted,

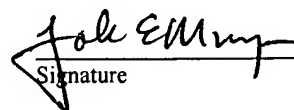
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 OCTOBER 11, 2006
Signature Date